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11 UNITED STATES OF AMERICA,

NO. CR. 89-106 LKK

12 Respondent,

13

ORDER

14 RICHARD J. AICHELE,

15 || Movant.

17 On July 26 2010 Aichele file

17 On July 26, 2010, Aichele filed a petition for writ of error
18 audita querela seeking retroactive application of several Supreme
19 Court decisions. On August 12, 2010, the court denied the petition
20 citing several Ninth Circuit decisions for the proposition that the
21 Supreme Court cases are not retroactive. Aichele subsequently
22 appealed the court's denial of the petition to the Ninth Circuit.
23 On January 27, 2011, the Ninth Circuit found that the appeal
24 "appears to arise under 28 U.S.C. § 2255," and, thus, "remanded the
25 case to the district court for the limited purpose of granting or
26 denying a certificate of appealability."

1 The court has reviewed the record and declines to issue a
2 certificate of appealability. The merits of Aichele's claims are
3 not debatable among jurists of reason because the Ninth Circuit has
4 determined that the Supreme Court decisions do not apply
5 retroactively.

6 IT IS SO ORDERED.

7 DATED: January 28, 2011.

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11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
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